The application is believed to be in condition for allowance because the claims are novel over the cited art. The following paragraphs provide the justification for these beliefs. In view of the following reasoning for allowance, the applicants hereby respectfully request further examination and reconsideration of the subject application.

The Section 102(e) Rejections of Claims 1-16, 18-27, 35 and 36

Claims 1-16, 18-27, 35 and 36 were rejected under 35 USC 102(e) as being anticipated by Tillman, U.S. Patent No. 6,496,980. The Office Action asserts that Tillman discloses each and every element of the rejected claims. The applicants respectfully disagree.

The applicant claims a computer-implemented process, a client-server based computer network, and computer-executable instructions in which a client computer's first request for an audio and/or video program is custom tailored to the actual bandwidth of the network available to the client computer. More specifically, **the applicant claims a process, network and instructions in which the client computer's first request for an audio and/or video program** (termed a "base quality" version of the program) **involves requesting as many layers, starting with the base layer, as can be transmitted without exceeding the available bandwidth of the network**.

Tillman, on the other hand, does not teach this feature. Nowhere in the sections pointed out by the Examiner (i.e., abstract, Col. 2, lines 47-59, Col. 4, lines 54-57, Col. 5, lines 25-44, Col. 6, lines 14-22, and Col. 10, lines 10-21), or anywhere else in the Tillman reference, is it even suggested that the client **requests a base quality version of an audio, video or audio-video program that includes as many layers, starting with the base layer, as can be transmitted without exceeding the available bandwidth of the network.** Rather, the Tillman reference

expressly teaches that the original data is received in the form of a base layer only (e.g., Col. 7, lines 36-37) and does not include any enhancement data whatsoever.

A prima facie case of anticipation is established only when the Examiner can show that the cited reference teaches each of the claimed elements of a rejected claim. In this case, the Examiner cannot show that the Tillman reference teaches the claimed feature whereby requesting a base quality version of a program includes requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network. Thus, the rejected claims recite features that are not taught in cited art, and as such a prima facie case of anticipation cannot be established. It is, therefore, respectfully requested that the rejection of Claims 1-16, 18-27, 35 and 36 be reconsidered based on the novel claim language exemplified in claim 1:

> "A computer-implemented process for obtaining progressively higher quality versions of an audio-only program, video-only program, or audio and video program over a client-server based network, comprising **a client computer** performing the process actions of…
>
> **requesting a base quality version of the program from a server** over the network, wherein the base quality version of the program comprises layer data of a layered unicast having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy, and **wherein requesting a base quality version of the program from a server over the network comprises requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client**

without exceeding the available bandwidth of the network".

Summary

In summary, it is believed that the claims are in condition for allowance. Accordingly, allowance of Claims 1-16, 18-27, 35 and 36 at an early date is courteously solicited.

Respectfully submitted,

Richard T. Lyon
Registration No. 37,385
Attorney for Applicant

LYON & HARR, LLP
300 Esplanade Drive, Suite 800
Oxnard, CA 93036
(805) 278-8855